IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/03/2004

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Appeal No.1475 of 2001
and
C.M.P.No.13014 of 2001

The Management
Arul Anandar College
Karumathur-636 573
Madurai District. ... Appellant

-Vs-

1.The Presiding Officer
Labour Court, Madurai.

2.M.Rajendran ... Respondents

PRAYER: Writ Appeal against the order passed in W.P.No.6563 of 1993 dated 31.7.2000 on the file of this Court.

!For Appellant : Mr.Vijay Narayan

^For Respondent No.2 : Mr.Ajay Khose
for Mr.D.Hariparanthaman

:J U D G M E N T

(Judgment of the Court was delivered by
F.M.IBRAHIM KALIFULLA, J.)

This is an unfortunate case where the second respondent workman was driven from pillar to post after his dismissal by the appellant Management as early as on 25.6.1982, which order itself was to take retrospective effect from 3.4.1982. Initially when the second respondent raised an industrial dispute, that was not referred for adjudication and he had to knock at the doors of this Court for getting a reference. Thereafter, with much strain he was able to secure a reference by virtue of an order of this Court dated 8.8.1989 in W.P.No.9959 of 198 5.

2. Ultimately, the dispute came to be referred for adjudication to

the file of the first respondent herein, which came to be numbered as I.D.No.579 of 1989, wherein the issue was relating to the justification of the non-employment of the second respondent. The second respondent filed his claim statement as early as on 12.3.1990. The appellant came forward with the counter statement initially on 01.09.1990, in which the appellant took the only stand that the issue relating to the non-employment of the second respondent can be validly raised only under the provisions of the Tamil Nadu Private Colleges Regulations Act and not under the provisions of the Industrial Disputes Act. Significantly, the appellant had not stated anything about the justification of the non-employment of the second respondent. When the said stand of the appellant did not find favour with the first respondent, it is stated that a writ petition came to be filed in this Court, which was rejected and the appellant was also not successful in the further writ appeal in the said proceedings.

3. Thereafter, though the appellant came forward with an additional counter statement on 24.2.1992, contending that the second respondent came to be dismissed from service for certain acts of misconduct proved in an enquiry held for that purpose and that in the event of the said enquiry found to be vitiated, the appellant should be given an opportunity to substantiate the dismissal, significantly, an I.A. came to be filed in I.A.No.246 of 1992 taking a categoric stand that the appellant was not relying upon the enquiry proceedings and that they should be permitted to adduce evidence afresh before the first respondent in proof of the misconduct levelled against the second respondent. However, subsequently the appellant came forward with another application seeking the first respondent's direction to send for the file in R.C.No.543 of 1984 from the Labour Officer-I, Madurai which is stated to have contained the whole of the enquiry proceedings held by the appellant as against the second respondent. The said application was said to have been ordered by the first respondent. Still, thereafter the petitioner came forward with the present I.A. in I.A.No.325 of 1992 with a prayer that the first respondent should deal with the validity of the domestic enquiry as a preliminary issue by relying on the documents received from the Labour Officer-I, Madurai in R.C. No.543 of 1984. This application came to be filed on 22.12.1992. It is relevant to state at this juncture that prior to the filing of the present application, the petitioner came forward with yet another I. A. in I.A.No,79 of 1992 with a plea that the second respondent would not satisfy the definition of 'workman' as defined under Section 2(s) of the Industrial Disputes Act and that the said issue should be decided in the first instance. When the first respondent Labour Court refused to accede to the plea of the appellant, once again a writ petition came to be filed, which was also rejected and the writ appeal also came to be ultimately dismissed.

4. In the above stated background, the first respondent labour Court passed orders in I.A.No.325 of 1992, holding that the appellant was in the habit of filing one application after another and invited a finding from this Court apparently with a view to harass the worker and keep him away from the job as also preventing him from getting the dispute disposed of one way or the other. In other words, the first respondent labour Court was of the view that the sole idea of the appellant was only to drag on the dispute under some

pretext or the other in order to tire out the second respondent workman. The first respondent labour Court also took note of the fact that while the appellant made it clear that even as on 7.10.1992 in I.A.No.246 of 1992 that they were not relying on the enquiry proceedings by seeking permission of the first respondent to adduce evidence afresh, the appellant cannot now be permitted to take a sudden 'U' turn and seek for a decision on the validity of the domestic enquiry merely on the basis of the copies of the so called enquiry proceedings stated to have been called for from the office of the labour Officer-I, Madurai in R.C.No.543 of 1984.

5. In the above stated circumstances, when the appellant came forward with the present writ petition, the learned single Judge also found that the appellant was quite unreasonable in its attitude at every stage of the proceedings and that the sole intention of the appellant was only to stultify the legitimate right of the second respondent to get the dispute relating to his non-employment resolved one way or the other. On a perusal of the order of the learned single Judge, as well as, the order of the first respondent, we find force in the stand of the second respondent, as has been confirmed by the above said orders. It is true that in cases relating to non-employment which were preceded by necessary domestic enquiry proceedings, the respective management would be entitled to rely upon the said enquiry proceedings in the first instance and seek for appropriate orders on the validity of such proceedings before ever making a request for establishing the misconduct afresh before the appropriate adjudicatory forum. In fact the recent decision of the honourable Supreme Court in 2001 (5) S.C.C.433 "KARNATAKA STATE ROAD TRANSPORT CORPORATION V. LAKSHMIDEVAMMA", the said position has been clearly set out in paragraph 38 and 39, which reads under:

"38. In various decisions rendered by this Court, it has been held that such a request can be made to the Labour Court/Tribunal before the proceedings are closed. There is no compelling reason to limit the exercise of discretion by the Labour Court/Industrial Tribunal to examine such a prayer on its own merit and decline it if not considered to be bona fide and made to delay the proceedings and to wreck the morale of the workman and compel him to surrender, to use the language of Shambhu Nath Goyal case. Ordinarily such a request when made immediately after the decision of the preliminary issue deserves to be allowed as held in Shankar Chakravati case prior to its elaboration by Justice Desai in Shambhu Nath Goyal case. If such a request is made soon after the enquiry is held to be invalid and the Labour Court holds it to be bona fide and further holds that no prejudice would be caused to the workman, there is no reason still to shut the employer when it has been rightly held, time and again, that the employer has a right to adduce evidence before the Labour Court in case of no enquiry or invalid enquiry. In such proceedings, pleadings do not deserve to be strictly construed.

39. For the foregoing reasons, it is not possible to hold that if the employer does not express his desire to lead additional evidence in reply to the statement of claim in proceedings under Section 10 or when an application is filed for approval under Section 33(2)(b) of the Act, the employer cannot be allowed to exercise option at a later stage of the proceedings by making an application for the purpose. The employer's request, when made before close

of proceedings, deserves to be examined by the Labour Court/Tribunal on its own merits and it goes without saying that the Labour Court/Tribunal will exercise discretion on well settled judicial principles and would examine the bona fides of the employer in making such an application."

(emphasis added)

6. However,in the highlighted part of the above extraction, the honourable the Supreme Court has also made a word of caution, in that, it has been clearly stated that appropriate labour Court/Tribunal would examine the request by the employers when made before the close of the proceedings on its own merits and that the said labour Court/ Tribunal will exercise such discretion on well settled judicial principles and would also examine the bonafides of the employer in making such an application. Therefore, while holding that the employer has got a right to seek for a decision on the validity of the enquiry in the first instance before ever asking for an opportunity to let in fresh evidence before the labour Court/Tribunal, it can still be held that in appropriate cases where there is total lack of bonafide on the part of the employer, such request need not necessarily be granted as a matter of course.

7. Having regard to the said legal position and considering the facts involved in this case, we find that the appellant's prayer in seeking for a decision on the validity of the enquiry at a stage when several other attempts of the appellant to thwart the disposal of the dispute did not yield the desired result, was only to drag on the industrial dispute raised by the second respondent and thereby tire him out from getting the ultimate result of the dispute. In such circumstances, we find total lack of bonafide in the attempt of the appellant. Therefore, the order of the first respondent and the confirmation of the same by the learned single Judge cannot be found fault with. The writ appeal fails and it is dismissed with costs of Rs.2000/- (Rupees Two thousand only) payable to the second respondent. Consequently, connected C.M.P.No.13014 of 2001 is also dismissed.

Index: Yes
Website: Yes

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